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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,707	01/02/2002	Idan Feigenbaum	P-2692-US1	6195
27130	7590	01/26/2005	EXAMINER	
EITAN, PEARL, LATZER & COHEN ZEDEK LLP 10 ROCKEFELLER PLAZA, SUITE 1001 NEW YORK, NY 10020			NEURAUTER, GEORGE C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,707	Applicant(s) FEIGENBAUM, IDAN	
	Examiner George C. Neurauter, Jr.	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,3-13 and 15-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1, 3-13, and 15-25 are currently presented and have been examined.

Allowable Subject Matter

The indicated allowability of claims 1, 3-13, and 15-25 is withdrawn in view of the newly discovered reference(s) to Maddalozzo, Jr. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 101

Claims 1 and 3-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1 and 3-12 claim a system for downloading a file from a computer, however, the system contains means plus function limitations. Only a machine or manufacture may have means plus function limitations, however, if the claims were amended to claim a machine or manufacture, the claims would be directed to statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the

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invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-13, and 15-25 are rejected under 35

U.S.C. 102(e) as being anticipated by US Patent 6 178 460 to Madalozzo, Jr. et al.

Regarding claim 1, Madalozzo discloses a system for downloading a file from a computer, the system comprising:

means for retrieving a plurality of portions of a file from a plurality of computers ("servers" or "locations"), wherein at least a first of said portions is retrieved from a first one of said computers and at least a second of said portions is retrieved from a second one of said computers; (column 12, lines 55-58; column 12, line 62-column 13, line 5; column 13, lines 14-18)

means for assembling ("tacked on") said file from said plurality of portions; (column 12, lines 11-36, specifically lines 29-31) and

means for determining the presence of said file on each of said computers. (column 5, lines 13-30; column 6, lines 40-41; column 12, lines 43-45)

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Regarding claim 3, Madalozzo discloses a system according to claim 2 wherein said means for determining is operative to:

determine the presence of said file on a primary computer ("initial network address" or "best performing location"); (column 10, line 64-column 11, line 13) and

determine whether said file on each of said plurality of computers is a duplicate ("mirror") of said file on said primary computer. (column 5, lines 13-30; column 11, lines 8-33)

Regarding claim 4, Madalozzo discloses a system according to claim 2 wherein said means for determining is operative to determine that said files on each of said computers have at least one file characteristic in common. (column 5, lines 13-30)

Regarding claim 5, Madalozzo discloses a system according to claim 1 and further comprising:

means for receiving a list of the addresses of said computers from a query-capable computer. (column 6, lines 40-41; column 12, lines 41-43)

Regarding claim 6, Madalozzo discloses a system according to claim 1 and further comprising:

means for determining the performance of said computers; means for ranking said computers from best performing to worst performing, and wherein said means for retrieving is operative to retrieve from a selected plurality of said computers selected

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in order of their ranking from best performing to worst performing. (column 10, line 64-column 11, line 33, specifically column 11, lines 24-33; column 12, lines 45-46 and 52-55)

Regarding claim 7, Madalozzo discloses a system according to claim 6 wherein said means for determining is operative to determine the response time of said computers. ("rate at which the server can process requests" or "loading"; column 5, lines 54-57; column 11, lines 4-7)

Regarding claim 8, Madalozzo discloses a system according to claim 6 wherein said means for determining is operative to determine the throughput of said computers. ("rate at which the server can transmit data to a client or user" or "data transfer capacity"; column 5, lines 54-57; column 11, lines 4-7)

Regarding claim 9, Madalozzo discloses a system according to claim 1 wherein said means for retrieving is operative to:

discontinue retrieving any of said portions from any of said computers that provides its portion at a performance level that falls below a predefined performance level; and continue retrieval of said retrieval-discontinued portion from any other of said computers. (column 6, lines 42-50; column 12, line 62-column 13, line 5)

Regarding claim 10, Madalozzo discloses a system according to claim 1 wherein said means for retrieving is operative to:

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discontinue retrieving any of said portions from any of said computers that provides its portion at a performance level that falls below a predefined performance level; and continue retrieval of said retrieval-discontinued portion from a computer other than any of said computers. (column 6, lines 42-50; column 12, line 62-column 13, line 5)

Regarding claim 11, Madalozzo discloses a system according to claim 1 wherein said means for retrieving is operative to retrieve using File Transfer Protocol (FTP). (column 9, lines 36-47, specifically lines 36-40)

Regarding claim 12, Madalozzo discloses a system according to claim 1 wherein said means for retrieving is operative to retrieve using Hypertext Transfer Protocol (HTTP). (column 8, lines 43-44)

Claims 13 and 15-24 are rejected since claims 13 and 15-24 recite a method that contains substantially the same limitations as recited in claims 1 and 3-12 respectively.

Claim 25 is rejected since claim 25 recites a computer program embodied on a computer-readable medium that contains substantially the same limitations as recited in claim 1.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The following prior art teaches downloading files from a plurality of computers including retrieving a plurality of portions from a plurality of computers, assembling the file from the portions, and ranking the computers' performance:

US Patent 5 950 198 to Falls et al;
US Patent 6 003 045 to Freitas et al;
US Patent 6 018 780 to Fenchel;
US Patent 6 085 251 to Fabozzi;
US Patent 6 105 029 to Maddalozzo et al;
US Patent 6 178 460 to Maddalozzo et al;
US Patent 6 192 412 to Cantoral et al;
US Patent 6 460 087 to Saito et al;
US Patent 6 477 522 to Young.

The following prior art generally teaches the state of the art in downloading files from a plurality of computers:

US Patent 5 583 995 to Gardner et al;
US Patent 5 974 460 to Maddalozzo et al;
US Patent 6 665 726 to Leighton et al.

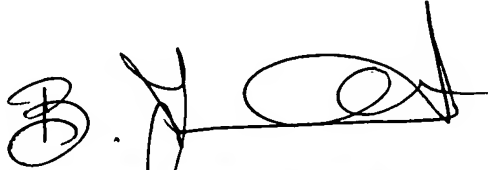
Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcn



BUNJOO JAROENCHONWANT
PRIMARY EXAMINER